



NEWS RELEASE

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SUBJECT: State shoreland protection standards to be reviewed
Advisory committee convened to update 1966 rules

MADISON, Wis. – The state is launching a broad-based effort to update standards intended to protect water quality, fish and wildlife habitat, recreational opportunities and scenic beauty along Wisconsin lakes and rivers.

The effort is spurred by a continuing waterfront building boom, new research about how such development affects water quality, fish and wildlife habitat, and growing complaints about the existing standards from property owners and local governments. Those standards, found in NR 115 of the Wisconsin Administrative Codes, set statewide minimums in unincorporated areas for lot sizes, how far structures are set back from the water's edge, and limits on removing trees and other plants. They are essentially unchanged since lawmakers created the shoreland protection program in 1966 and required counties to adopt and enforce shoreland zoning ordinances that met or exceeded the state standards.

An advisory committee with representatives of waterfront property-owners, local governments, the construction industry, and conservation groups will help the Department of Natural Resources evaluate and update the standards. Groups have been invited to select their representatives by Nov. 1 in preparation for the committee's first meeting in mid-November.

Options the advisory committee helps develop will be shared with the general public at a series of statewide listening sessions in fall 2003; and feedback from those sessions will shape the draft package of rules proposed for public hearings in late fall 2004.

"What we're hoping to do is open up a very old code to provide more flexibility for homeowners and for counties while gaining an additional degree of protection for important public resources," says Toni Herkert, the Department of Natural Resources shoreland specialist leading the revision process.

"We want to strike the proper balance between property owners' desires and the public's rights in Wisconsin's waters, and we hope to achieve that by working with an advisory committee and involving the general public early on in the process."

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Wisconsin's Public Trust Doctrine, based on the state constitution and further defined by case law and statute, provides that navigable lakes, ponds, streams, flowages and rivers are public resources held by the state for the benefit of all citizens. Lawmakers created the shoreland protection program in 1966 because of concern that uncontrolled development along lakes and rivers in unincorporated areas was threatening the public's interest in water quality, fish and wildlife habitat, recreation, and natural scenic beauty in these public resources.

Since that time, the number of dwellings on northern Wisconsin lakes of all sizes has increased an average of 216 percent, and as much as 800 percent. The scarcity of desirable waterfront property has pushed development into sensitive small, shallow lakes, steep slopes and wetlands, and people have been expanding or tearing down existing homes and building bigger new ones on the same lots.

Such trends have overwhelmed the minimum statewide standards and the counties' ability to enforce them, concluded a 1997 EPA-funded assessment of Wisconsin's shoreland protection program. "In a nutshell, the current standards are necessary but not sufficient to preserve water quality, habitat and natural beauty," it said. In addition, they contained clauses that are difficult for counties to interpret and enforce, which has created loopholes that thwarted their intent of the standards, the authors concluded.

In recent years, some counties have moved to adopt more protective standards: 30 of 72 counties have or are updating local shoreland ordinances, Herkert says. The statewide standards have hampered some counties' efforts to provide more flexibility to homeowners and better resource protection.

Committee to help develop options to share with public

The effort to evaluate and revise the statewide standards is envisioned as a multi-year, participatory effort similar to the one that earlier this year successfully secured a comprehensive package of rules to reduce polluted runoff from farms, cities, construction sites, roads, and other areas.

Department staff, in a series of meetings over the next year, will present to committee members a number of options for revising standards in four main topic areas. The areas are: building setbacks and natural buffers that can offset development impacts; lot sizes and limits on hard surfaces; structures pre-dating the standards, and mitigation options to give counties more flexibility in regulating development in specified circumstances such as construction on sub-standard lots. The advisory committee will be asked to respond, modify and/or add to these options.

The committee will note their preferred option in each of the areas, and DNR in Fall 2003 will conduct public listening sessions around the state to solicit public reaction to the advisory committee's options. Feedback from those sessions will shape the final report and recommendations, from which DNR staff will develop the actual rules, Herkert says.

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The tentative timetable calls for DNR staff in spring 2004 to seek authorization from the Natural Resources Board to conduct public hearings on the proposed NR 115 revisions, with DNR returning to the board later that year to request approval of a final package of rules.

“We’ve added several steps to our normal rule-making process to respond to people’s intense interest,” says Al Shea, who directs DNR’s watershed management bureau. “The advisory committee and listening sessions will ensure an open, informative and very participatory process.”

In addition, the public has opportunity to comment at the public hearings and at the Natural Resource Board meetings during which board members will consider authorizing public hearings for the draft rule, and then consider adopting a final rule package.

Materials the advisory committee members receive for their meetings will be available on DNR’s Web site, as will minutes from the advisory committee meetings. Many of the scientific papers used to evaluate the current standards and consider new ones are already posted.

For more information on shoreland management or the rule revision process contact Toni Herkert, shoreland management team leader, at (608) 266-0161 or Al Shea, DNR director of watershed management, at (608) 267-2759 or visit DNR’s Web site for updates at <http://www.dnr.state.wi.us>, then click on “go to some topics” choose “Shoreland Management.”

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Minimum statewide standards

Wisconsin law (Section 59.692, Wisconsin Statutes) requires counties to adopt and enforce zoning ordinances that meet or exceed the following minimum standards in unincorporated areas. 30 counties have chosen to update their standards to make them more protective.

- Lots served by public sanitary sewers must have a minimum average width of 65 feet and a minimum area of 10,000 square feet. Lots with a septic system must have a minimum average width of 100 feet and a minimum area of 20,000 square feet.
- All buildings and structures, except piers, boat hoists and boathouses, must be set back 75 feet from the ordinary high water mark. If an existing pattern of development exists, counties may allow lesser setbacks calculated by averaging the distances that surrounding buildings are set back from the ordinary high water mark.
- Buildings, structures and property subdivisions that predated the adoption of a shoreland zoning ordinance are considered nonconforming structures or lots and are treated similar to those under general zoning ordinances. The county may prohibit the alteration, addition or repair of such a structure if the cost of the alteration, addition or repair over the life of the structure or building exceeds half of the equalized assessed value of the building or structure.
- Clear-cutting of trees and shrubbery is prohibited within 35 feet of the ordinary high water mark except for one 30-foot wide corridor for every 100 feet of frontage.